

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

UNITED STATES OF AMERICA

CASE NO. 3:21-CR-00153

VERSUS

JUDGE TERRY A. DOUGHTY

**CHARLIE L. SIMPSON (01)
CHARLES D. GARDNER (02)**

MAG. JUDGE KAYLA D. MCCLUSKY

MEMORANDUM ORDER ON THIRD MOTION IN LIMINE

Before this Court is a Third Motion in Limine [Doc. No. 106] filed by the United States of America (the “Government”). Oppositions [Doc. Nos. 149 and 150] were filed by Defendants Charlie L. Simpson (“Simpson”) and Charles D. Gardner (“Gardner”).

For the reasons set forth herein, the Government’s Third Motion in Limine is **GRANTED**.

Simpson and Gardner are each charged in a five-count indictment with Conspiracy to Commit Bank Fraud, and Bank Fraud.¹ The trial is set to begin on September 25, 2023.

A. Government Arguments

In its Third Motion in Limine, the Government asks to admit summary exhibits pursuant to Federal Rule of Evidence (“FRE”) 1006. FRE 1006 permits the use of a summary, chart, or calculation to prove the contents of voluminous writings that cannot be conveniently examined in court. A proponent is required to demonstrate that the underlying records are so voluminous that it makes their review in court “inconvenient.” *United States v. Bishop*, 264 F.3d 535, 547 (5th Cir. 2001). The proposed summary of exhibits consists of (1) summaries of financial information; and (2) summaries of text messages.

¹ [Doc. No. 1]

(1) Summaries of Financial Information

These summaries are labeled as Government Exhibit Nos. 001-002, 004, 008-041, and 313. These summaries were prepared by expert witness Carl Richard (“Richard”) and previously disclosed to Simpson and Gardner. The financial information summaries were prepared by Richard for the financial activities that occurred in eight bank accounts at two financial institutions over a fifteen-month period. Richard transposed data from the bank account statements and corporate financial statements into spread sheets. The Government alleges it received more than 500,000 pages of documents from Origin Bank and First National Bank largely relating to the bank accounts used by Simpson and Gardner. The Government also alleges that the proposed summary charts consolidated the data.

(2) Summaries of Text Messages

These summaries are labeled as Government Exhibit Nos. 003, 005, and 007. Exhibit 003 corresponds to an electronic device labeled in discovery as “CS2” and referenced in the attestations of the forensic examiners as “Apple iPhone 6s Model A1687.” Exhibit 005 corresponds to an electronic device labeled in discovery as “CS1” and referenced in the attestations of the forensic examiners as “Apple iPhone 6 Plus Model A1522.” Exhibit 007 corresponds to an electronic device labeled in discovery as “Broussard” and referenced as “Apple iPhone 65 Model MKQHZ.”

The combined forensic reports for the three devices had more than 200,000 messages, and exceeds 2,100 pages. The Government paired each message with a photograph on the summaries.

B. Defendants’ Arguments

Defendants object to the summary charts, alleging that the underlying evidence has not been proven to be admissible, deprives them of the right of confrontation, are demonstrative, are prejudicial to the defendants, the summaries are not in chronological order, depict incomplete

conversations, are text messages sent by other individuals not subject to cross-examination, and the charts are misleading, are argumentative and contain opinions.

C. Law and Analysis

FRE 1006 allows a party to use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court.

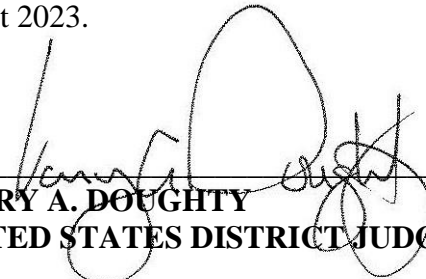
Generally, the admission of charts and summaries is a matter of judicial discretion. *Baines v. U.S.*, 426 F.2d 833 (5th Cir. 1970). The underlying evidence supporting a chart or summary must also be admissible. *USA v. Scales*, 594 F.2d 558 (6th Cir. 1979), cert-denied, 99 S.Ct. 2168.

All of the supporting documents for the charts and summaries have been provided to Simpson and Gardner. Expert witness Richard prepared the charts and summaries from the underlying documents. Richard will testify to the charts and summaries and will be subject to cross-examination. If specific underlying documents need to be addressed, Defendants will be able to cross-examine Richard about it. Due to the huge number of underlying documents, they cannot be conveniently examined in Court. This is the type of situation FRE 1006 was enacted to address.

For the reasons set forth herein,

IT IS ORDERED that the Government's Third Motion in Limine [Doc. No. 106] is **GRANTED**.

MONROE, LOUISIANA, this 22nd day of August 2023.


TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE